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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,504	02/17/2004	Peter W. J. Jones	TBRX-P01-004	7870

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BOSTON, MA 02110-2624

EXAMINER
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SMITH, RICHARD A

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,504	<b>Applicant(s)</b> JONES ET AL.	
	<b>Examiner</b> R. Alexander Smith	<b>Art Unit</b> 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claims 2, 4, 13, 15, 26, 28 and 42-51 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification**

2. The specification is objected to because of the following informality: Throughout the specification including the claims the applicant has used the term "insignium" which the examiner cannot find in any available dictionary, i.e., book, electronic and Internet based versions. Therefore, the examiner requests the word be modify accordingly.

### **Claim Objections**

Claims 1-51 are objected to because of the following informalities:

(a) The claims are objected to because it is unclear to the examiner as to how two colors can be claimed. For example, when the fashion industry has decided and will decide that the latest clothing fashion involves red and purple, or red and blue, or blue and green, or blue and tan, it appears to the examiner that the color combination reads on the applicant's application. The same can be said of vehicles, e.g., blue and silver, blue and tan, blue and white, green and white (common for police vehicles, etc.) or a police car with red and blue flashing lights, all appear to read on the claims. For insignium the U.S. flag, and for safety indicators the standard convention for highway information signs (e.g. blue and white), or blue traffic cones which are available but not common because of convention or regulation.

(b) Claims 10, 11, 23, 24, 40 and 41 are objected to since it is unclear as to how the applicant can claim an observer, be it mammal or human, as part of the invention.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 10, 11, 12, 14, 16, 17, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 607,001 A1 to Houghton.

Houghton discloses the limitations of claims 1, 3, 10, 11, 12, 14, 16, 17, 23 and 24 when the safety indicator is the sign as shown in figure 2 and the first color is white and the second color is blue as discussed throughout the specification.

With respect to claim 17, i.e., indicates a hazard: the intended use has not been given any patentable weight since the intended use does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Furthermore, it appears to the examiner that a sign stating "Police Slow" would be used to indicate a hazard, e.g., traffic directing due to a malfunctioning red light or due to a large event at a stadium, convention hall, church, parade, etc.

5. Claims 1-4, 8-15, 17 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,294,924 to Dydzik.

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Dydzik discloses the limitations of claims 1-4 and 8-11 when the safety indicator is either a conventional traffic cone of figure 1 or barricade of figure 6, when the secondary color is emitted by a primary light source 1 when a blue light is used (column 2, lines 55-61).

With respect to the first color, Dydzik discloses conventional cones and barricades; ergo orange is the normal color for conventional traffic cones and barricades, said orange being the first safety color and produced by a secondary light source

With respect to claim 17, i.e., indicates a hazard: the intended use has not been given any patentable weight since the intended use does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

6. Claims 12, 14, 15 and 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,075,872 to McGuire.

McGuire discloses the limitations of claims 12, 14, 15 and 18-24 when the insignium is the U.S. flag as shown in figure 2 with an unmodified secondary light source output as shown in figure 3 and described in block 10 of figure 1, or a modified secondary light source output as shown in figures 4A1 through 4G and described throughout the specification. The first color being red and/or white and the second color being blue.

7. Claims 12-15 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 2,280,817 to Freeman.

Freeman discloses the limitations of claims 12-15 and 21-24 when the insignium is the U.S. flag, the first color (red which is painted or marked) is produced by a secondary light source

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(i.e., reflection of light from source 31 and 32), a second color (blue) produced a primary light source (the opening 30 with the translucent blue sidewalls with clear openings and a light therein, in a broad sense, is the primary light source).

8. Claims 25, 27, 33 and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,911,612 to Steger.

Steger discloses the limitations of claims 25, 27, 33 and 38-41 when the article of clothing is a vest, the first color being yellow, the second color being blue (column 4, lines 14-22).

9. Claims 25-29, 33 and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,146,006 to Cross.

Cross discloses an article of clothing in the form of a belt or a safety vest (figures 15-16), that different second colors of light emitting diodes, i.e., primary light source, can be used and can flash at varying rates (column 5, lines 13-22), that user wears clothes of common colors (column 3, lines 43-53), that the device can be used on a common safety vest worn by workers in numerous industries (column 5, lines 66+), i.e., a first color of a secondary light source, and that the second color(s) is produced by red, green and blue light emitting diodes to achieve an array of a possible sixty four color spectrum and laid out in various combinations (column 6, lines 38-51) to achieve the desired output characteristics.

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With respect to the first color, Cross discloses a conventional safety vest commonly employed, ergo orange is the normal color for conventional traffic cones and barricades, said orange being the first safety color and produced by the secondary light source.

With respect to the second color, the limitations of the second color will be met when the blue diode is used unmixed as suggested by Cross based on the desired output characteristics.

10. Claims 1, 3, 10, 11, 12, 13, 17, 42, 44, 46, 47 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,050,924 to Hansen.

Hansen discloses the limitations of claims 1, 3, 10, 11, 12, 13, 17, 42, 44, 46, 47 and 49 when the safety indicator and insignium is the word "DANGER" or an "X" pattern (column 7, line 62 through column 8, line 12), the tarp is blue and the reflective coating is yellow.

11. Claims 42, 43 and 45-49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3,723,725 to Jaeger.

Jaeger discloses the limitations of claims 42, 43 and 45-49 when the first color is the flashing blue (column 3, lines 14-27) and the second color is met by the color of the police car depending on the county or state and the colors applied to the cars for that county or state in combination with the above flashing blue. For example in Virginia, the Fairfax County cars are black and white, the Prince William County cars are powder blue and white, the Virginia State Police use green and white, the Prince William County Sheriff Department uses tan or light brown mixed with darker brown.



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12. Claims 42-44, 48 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,760,531 to Pederson.

Pederson discloses the limitations of claims 42, 43, 48 and 49 when the first color is the flashing red and the second color is the flashing blue alternating with said first color (column 4, lines 1-19).

With respect to claims 43 and 44 wherein a second color is at least in part produced by a secondary color: This condition is met by the color of the police car depending on the county or state and the colors applied to the cars for that county or state in combination with the above flashing blue. For example in Virginia, the Fairfax County cars are black and white, the Prince William County cars are powder or medium blue and white, the Virginia State Police use green and white, the Prince William County Sheriff Department uses tan or light brown mixed with darker brown.

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was

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commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 5-7 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dydzik in view of U.S. 5,774,202 to Ábrahám et al.

Muncheryan '338 teaches all that is claimed as discussed in the above rejections of claims 1-5 and 8-10 except for the limitations of claims 5-7.

Ábrahám et al. discloses people suffering from various forms of color blindness (column 1, line 64 through column 2, line 35), that red-green blindness of various forms (protoanomaly, deuteranomaly, protanopia and deuteranopia) is the most common, and discloses a tritos sensitivity curve at maximum at approximately 448 nm. (column 5, lines 33-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second color blue, taught by Dydzik, to be a blue in a range of about 445 nm., as suggested by Ábrahám et al., in order to make the blue more noticeable to the average person and to those suffering from various forms of red-green blindness.

15. Claims 29-32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steger in view of U.S. 5,588,156 to Panton, Jr.

Steger teaches all that is claimed as discussed in the above rejections of claims 25, 27, 33 and 38-41 except for the limitations of claims 29-32.

Panton, Jr. discloses an article of clothing of various types (column 4, lines 23-39) can include visible contrasting safety colors and discloses the use of a geometric pattern, i.e., wearable insignium, to make the wearer visible to a motorist. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to enhance the vest with the first and second colors, taught by Steger, to include the first and second colors on other garments, headwear, footwear, legwear, etc. and to use a wearable insignium, as taught by Panton, Jr., in order to help make the wearer more visible to motorists in addition to boaters.

16. Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steger in view of U.S. 5,774,202 to Ábrahám et al.

Steger teaches all that is claimed as discussed in the above rejections of claims 25, 27, 33 and 38-41 except for the limitations of claims 35-37.

Ábrahám et al. discloses people suffering from various forms of color blindness (column 1, line 64 through column 2, line 35), that red-green blindness of various forms (protoanomaly, deuteranomaly, protanopia and deuteranopia) is the most common (i.e. roughly 8.38% of 8.4% of the population) and discloses a tritos sensitivity curve at maximum at approximately 448 nm. (column 5, lines 33-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second color blue, taught by Steger, to be a blue in a range of about 445 nm., as suggested by Ábrahám et al., in order to make the blue more noticeable to the average person and to those suffering from various forms of red-green blindness.

17. Claims 25, 27 and 29-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,588,156 to Panton, Jr. in view of U.S. 5,774,202 to Ábrahám et al.

Panton, Jr. discloses an article of clothing of various types (column 4, lines 23-39) can include visible contrasting safety colors and discloses the use of a wearable insignium in the form of a geometric pattern to make the wearer visible to a motorist. Furthermore, Panton, Jr. discloses the prior art uses fluorescent red, orange, yellow or green, but does not disclose the colors employed in his invention. He does disclose the colors used are highly bold contrasting colors in order to make them noticeable.

Panton, Jr. does not disclose a first color and a second color.

With respect to the first color, since all clothing, except for possibly clothing of transparent plastic, have color, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a first color viewable to an ordinary observer since this is one of the most commonly available features of an article of clothing and to allow a wearer a sense of propriety.

Ábrahám et al. discloses people suffering from various forms of color blindness (column 1, line 64 through column 2, line 35), that red-green blindness of various forms (protoanomaly, deuteranomaly, protanopia and deuteranopia) is the most common (i.e. roughly 8.38% of 8.4% of the population) and discloses a tritos sensitivity curve at maximum at approximately 448 nm. (column 5, lines 33-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second color, taught by Panton, Jr., to include a

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contrasting bold blue, and to make the blue in a range of about 445 nm., as suggested by Ábrahám et al., in order to make the wearer more obvious to drivers who have some form of red-green blindness.

18. Claims 50 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaeger.

Jaeger teaches all that is claimed as discussed in the above rejections of claims 42, 43 and 45-49 except for the limitations of claims 50 and 51.

With respect to claims 50 and 51: Since numerous law enforcement agencies, e.g. the United States Park Police, the Coast Guard and L.A.'s police department including L.A.'s harbor patrol, employ not only cars but also watercraft and aircraft, it would have been obvious to one of ordinary skill in the art at the time of the invention to add the flashing lights, taught by Jaeger, to the other emergency vehicles which include watercraft and aircraft, since these vehicles are also emergency vehicles and since it would help identify and make obvious to an observer that the vehicle is an official emergency vehicle.

19. Claims 50 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson.

Pederson teaches all that is claimed as discussed in the above rejections of claims 42-44, 48 and 49 except for the limitations of claims 50 and 51.

With respect to claims 50 and 51: Since numerous law enforcement agencies, e.g. the United States Park Police, the Coast Guard and L.A.'s police department including L.A.'s harbor

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patrol, employ not only cars but also watercraft and aircraft, it would have been obvious to one of ordinary skill in the art at the time of the invention to add the flashing lights, taught by Pederson, to the other emergency vehicles which include watercraft and aircraft, since these vehicles are also emergency vehicles and since it would help identify and make obvious to an observer that the vehicle is an official emergency vehicle.

### ***Conclusion***

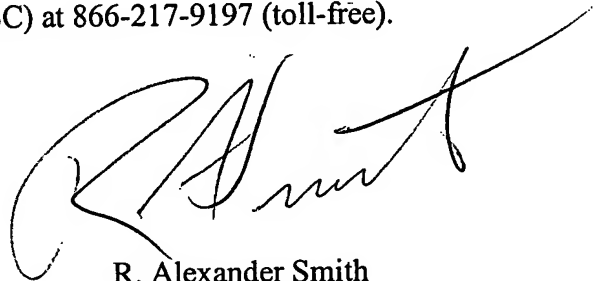
20. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related safety indicators, insignium, articles of clothing and vehicles.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'RAS', with a long horizontal stroke extending to the right.

R. Alexander Smith  
Patent Examiner  
Technology Center 2800

RAS  
January 10, 2005